

**Remarks/Arguments**

Applicants respectfully request reconsideration of this application in view of the above amendments and the remarks below.

Applicants enclose herewith a new IDS Form making of record the European Search Report dated January 14, 2005 and the NPL references, copies of which are enclosed. Although applicants do not have the dates for the NPL references, they are prior to the date of the invention claimed in this application. Applicants accordingly request that these materials be made of record in the Patent Office file.

Claims 1-14 are pending in the application. Of these, claims 3, 8, and 9 have been withdrawn from consideration due to an election of species.

Claims 15-21 have been cancelled.

The present invention relates to a product comprising a composition for conditioning the hair, said composition comprising: (i) a first hair conditioning agent, wherein said first hair conditioning agent penetrates into the core of the hair; (ii) a second hair conditioning agent, wherein said second hair conditioning agent penetrates into the cortex region of the hair but does not substantially penetrate into the core of the hair; and (iii) a third hair conditioning agent, wherein said third hair conditioning agent remain on the hair surface and does not substantially penetrate into the cortex of the hair; wherein said product comprises advertising stating that said first hair conditioning agent, said second hair conditioning agent, and said third hair conditioning agent condition different regions of the hair.

Claim 1 has been amended herein to recite that the product comprises a composition for conditioning the hair. No new matter has been added.

In view of applicants' election of species, olive oil is the first conditioning agent presently under consideration and almond oil is the third conditioning agent presently under consideration.

Claims 1, 2 4-7 and 11-14 stand rejected under 35 U.S.C §103(a) as obvious over the combination of US Patent Nos. 4,999,187 to Vernon and 5,843,193 to Hawkins et al. The Examiner argues Vernon discloses a hair treatment composition containing olive oil and almond oil, and that oils are known conditioning agents since they provide emolliency to the hair/scalp. The Examiner acknowledges that Vernon

does not teach or suggest the use of meadowfoam seed oil, but argues this is taught by Hawkins et al., which disclose a hair dye that may optionally contain a fatty oil such as meadowfoam seed oil. The Examiner argues it would have been obvious to add meadowfoam seed oil to the oils used by Vernon. The Examiner further argues that the advertising contained in the product does not carry any patentable weight.

Applicants disagree. First, the references and the claimed invention relate to three different product classes. To wit, the claimed invention is a hair conditioner. Vernon relates to a hair treatment composition for treating dandruff and growing hair, although it may condition. The Hawkins et al. patent relates to a hair dye. Nothing is said in Hawkins et al. about conditioning.

Accordingly, oils, to the extent they are contained in the compositions of the references, are not necessarily performing the same functions. The Examiner argues, without any evidence, that the oils of the references are there to condition. There is no proof of this, however, and given that the compositions of the references are treating different conditions, it would seem to be inappropriate to conclude this.

This is especially true given that the claimed composition further requires each of the three oils to have a particular function: one that penetrates into the core of the hair, one that penetrates into the cortex of the hair but does not substantially penetrate into the core of the hair, and one that does not substantially penetrate into the cortex of the hair. This is explicit in the claims. It is the result of applicants' recognition that different hair conditioning agents chemically affect the hair differently, and that by combining three hair conditioning agents with three different functions, a new and superior hair conditioning composition results. Applicants do not dispute that various oils such as those used herein are known in the art. However, identification of their chemical behavior and deliberate combination of them based on such chemical behavior is not found in the prior art.

Applicants therefore submit that the rejection under Section 103(a) should be withdrawn.

Claims 1, 2, 4-7 and 11-14 have also been provisionally rejected for obviousness-type double patenting over claims 1, 2, and 4-8 of commonly assigned

US Patent Appln. S/N 10/675,868. Applicants will file an appropriate Terminal  
Disclaimer on the indication of allowable subject matter.

Reconsideration of the application is earnestly requested.

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